

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated September 20, 2023 (the “**Reconsideration Decision**”), in which the Ministry determined that the Appellant was ineligible for the disability assistance (the “**Disability Assistance**”) that she received for the period between June 2021 and October 2022, resulting in an overpayment of \$8,663.58 (the “**Overpayment**”). As a result, the Appellant is liable to repay the Overpayment.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – sections 11 and 18
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 1, 9, 24 and 29

Note: The full text of the legislation is available at the end of this Decision.

Part E – Summary of Facts

The hearing took place on April 12, 2024 in person.

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- The Appellant is a sole recipient of Disability Assistance. She is currently in receipt of Medical Services Only.
- On June 20, 2023, the Ministry advised the Appellant that her file was reviewed to ensure that the amount of Disability Assistance she received was correct. Based on its review, the Ministry determined that the Appellant was not eligible for the Disability Assistance she received between June 2021 and October 2022; as a result, she received an Overpayment totaling \$8,663.58. The Ministry explained that the Overpayment arose because the Appellant did not accurately declare her Federal Old Age Security (“**OAS**”) and Guaranteed Income Supplement (“**GIS**”) benefits received from the federal government between June 2021 and October 2022. The Ministry provided the Appellant with a chart showing how the Overpayment was calculated.
- On August 30, 2023, the Appellant submitted a Request for Reconsideration in which she explained:
 - The Overpayment was the result of a misunderstanding arising from her reporting obligations and the consent she provided during the Disability Assistance application process.
 - She understands that she has reporting obligations and has faithfully reported all of the information she has received from the federal government.
 - She was under the impression that the provincial government had access to her federal pension information per the consent form she signed during the Disability Assistance application process. She did not fully understand the implications of the consent she provided and was not advised that the Ministry did not have access to her federal pension information.
 - In December 2022, after noticing a halt in her Disability Assistance, the Ministry informed her that there was an error on her file as her income had surpassed the eligibility threshold due to her receipt of a survivor benefit (the “**Survivor Benefit**”). The Appellant explained that she had reported all her earnings on her tax records and assumed that this information was accessible to the Ministry. She was offered the option of applying for a different type of assistance and she agreed, but she was not entirely clear about the implications. She was advised that

if she did not pursue this application, her case would be closed, and it could result in the need to repay the Overpayment.

- The Appellant had twice applied for the Survivor Benefit but was denied both times. There was no mention that the Survivor Benefit could be granted to her when she reached the age of 61. She received both the Disability Assistance and the Survivor Benefit, and she was not aware that these payments were not being recorded in the Ministry's system despite her reporting them on her taxes.
- In support of her Request for Reconsideration, the Appellant submitted the following documents:
 - her tax assessment for the 2021 tax year, showing \$26,336 total income;
 - her tax assessment for the 2022 tax year, showing \$24,838 total income;
 - a document from Service Canada, dated January 24, 2023, detailing her federal pension information and which showed that she received a total of \$1,638.69 per month from the following sources:
 - \$899.43 for Canada Pension Plan Disability ("**CPP-D**") benefits; and
 - \$739.26 for the Survivor Benefit;
 - a document from Service Canada, dated July 2022, determining that she was entitled to receive the GIS and the Survivor Benefit for the period of July 2022 to June 2023, and that her July payment would be \$701.31;
 - a T5007 Statement of Benefits from the Canada Revenue Agency for the year 2021, indicating she received disability benefits totaling \$10,508.36; and
 - a T4A Statement of OAS from the Canada Revenue Agency for the year 2021, indicating a net supplement of \$9,443.04 being paid to her.
- Upon review of the Request, the Ministry issued the Reconsideration Decision that determined:

"You have received an overpayment of assistance because you did not declare the federal OAS and GIS benefits you received during the period from June 2021 to October 2022 through monthly reporting, as required in accordance with Section 29 of the EAPWD Regulation. You have explained that you did not report this income when you began to receive it because you were under the impression that this information was accessible to the ministry directly from the federal government. A review of your file shows that the ministry's reporting requirements were explained to you when you became a recipient of disability assistance in 2018, though you have emphasized that you

did not fully understand the implications of these requirements. The ministry empathizes with your situation but unfortunately has no discretion in this matter as set out in Section 18 of the EAPWD Act. Because you have received an overpayment of assistance, you are required to repay that amount to the ministry.

The ministry notes that you also received CPP-D payments that affect your disability assistance during the period of your overpayment, however, these payments were captured by the shared data match with Service Canada. These earnings are considered unearned income and are not exempt from your disability assistance.

Upon review of the overpayment chart and the history on your file regarding the disability assistance benefits provided to you, the ministry is satisfied that you received disability assistance for the benefit months of August 2021 through to December 2022 totaling \$8,663.58 which you were not eligible to receive.”

- As a result, the Ministry calculated the Overpayment of Disability Assistance to the Appellant in the amount of \$8,663,58 to account for the period between June 2021 to October 2022. In closing, the Ministry advised the Appellant that she was required to repay the provincial government \$8,663.58.

(b) The Appeal

On February 27, 2023, the Appellant filed a Notice of Appeal in which the following was noted on the Appellant’s behalf:

“Disagree with the decision, as I received unclear explanation on what should be declared and not declared, and the ministry has access to federal & provincial payments, and my income. It is unfair and I had no knowledge that the two govt’s do not communicate.”

The Appeal hearing was held on April 12, 2024.

During the hearing, the Appellant, who was assisted by an interpreter, elaborated on the information found in her Request for Reconsideration. For example, she described:

- her immigration to Canada and the circumstances that she and her family faced upon moving here;
- the subsequent passing of her spouse and the impact on her and her ability to provide for her children;
- her receipt of Disability Assistance and other assistance from the Ministry and the federal government;

- her belief that her information regarding the receipt of assistance was being shared between the provincial and federal governments;
- that she never intended to hide anything from the Ministry in terms of the other assistance she was receiving; and
- that the Overpayment was causing her stress and affecting her blood sugar, blood pressure and mental wellbeing.

Upon questioning from the Ministry, the Appellant agreed that she received the Disability Assistance , the GIS and Survivor Benefit for the period in question, all at the same time. Further, the Appellant did not dispute the amount of the Overpayment or make any submissions regarding its calculation.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. The Ministry advised that it came to learn of the Overpayment after it was assessing the Appellant's eligibility for a bus pass that she had applied for. The Ministry explained that it had no knowledge of the Appellant's receipt of the Survivor Benefit as the Ministry and federal government do not share information in the manner the Appellant believes. Further, the Ministry explained that the legislation does not allow it to forgive the Overpayment.

(c) Admissibility of New Evidence

The Ministry had no objection to the Appellant's additional oral evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for the Disability Assistance that she received for the period between June 2021 and October 2022, resulting in an Overpayment of \$8,663.58.

Appellant's Position

The Appellant argues that she should not be held liable for the Overpayment because of her mistaken belief regarding the exchange of information between the provincial and federal governments. As the Appellant did not intend to mislead the Ministry, she should be excused from liability or having to pay the Overpayment.

Ministry's Position

The Ministry maintains that the Appellant was ineligible for the Disability Assistance between June 2021 and October 2022 because her net income was more than the amount of Disability Assistance for which she would otherwise have been eligible. As the Appellant had failed to report that income, its decision regarding the Overpayment should stand.

Panel Decision

Section 11 of the Act provides that, for an individual to be eligible for Disability Assistance they must submit a form and notify the Ministry of any change in circumstances or information that may affect their eligibility for Disability Assistance.

Section 29 of the Regulation requires a recipient of Disability Assistance to report any change in circumstances or information that may affect their eligibility for DA on the 5th day of each calendar month.

Sections 9 and 24 of the Regulation provide that a family unit is not eligible for Disability Assistance if the net income of the family unit determined under the Regulation (calculated under Schedule B) equals or exceeds the amount of Disability Assistance determined under the Regulation (calculated under Schedule A) for the family unit.

Section 1 of the Regulation defines "unearned" income as including:

- any type or class of Canada Pension Plan benefits;
- surviving spouses' allowances; and
- OAS and GIS payments.

Section 18 of the Act provides that, if Disability Assistance is provided to an individual that is not eligible for it, the recipient for which the overpayment is provided is liable to repay to the government the amount or value of the overpayment provided for that period.

(a) Eligibility for Disability Assistance and Unearned Income

In this Appeal, the Panel finds that the documents and evidence provided support that the Appellant received the GIS and the Survivor Benefit from the federal government between June 2021 and October 2022; indeed, the Appellant does not deny or dispute this. As a result, the Panel finds that the Appellant was required to report her GIS and Survivor Benefit to the Ministry, and that the Ministry was required to account for the Appellant's GIS and Survivor Benefit when calculating her net income given that the noted benefits are defined as unexempted unearned income pursuant to the Regulation.

Further, the Panel finds that the Appellant did not report her receipt of the GIS and the Survivor Benefit to the Ministry as required by section 11 of the Act and section 29 of the Regulation. While the Appellant advised of her mistaken belief that the provincial and federal governments shared information regarding her receipt of the noted benefits, the Appellant could not direct the Panel to any document or evidence that supported her mistaken belief. While the Appellant may very well have been confused regarding her reporting obligations to the Ministry, the Panel finds that the Appellant's mistaken belief and inadvertent failure to report her change in circumstances does not excuse her from her reporting obligations.

As a result, the Panel finds that the Ministry reasonably determined that it was required to account for the Appellant's GIS and Survivor Benefit when calculating her net income for the purposes of determining her eligibility for Disability Assistance. As the Appellant's net monthly income between June 2021 and October 2022 was more than the amount of Disability Assistance for a single recipient, the Panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible to receive Disability Assistance during those months.

(b) Calculation of Overpayment

The Appellant does not dispute the amount of Overpayment, nor did she make any submissions disputing the Ministry's calculation of the Overpayment. On whole, the Appellant argued that she should not be liable for the Overpayment because of her mistaken belief regarding the exchange of information between the provincial and federal governments respecting her GIS and Survivor Benefit. In the absence of submissions on the calculation or amount of the Overpayment, the Panel finds that it would be procedurally unfair to unilaterally decide this issue.

In any event, the Panel notes that, pursuant to section 18(2) of the Act, the Minister's decision about the amount of the Overpayment is not appealable.

In sum, the Panel finds that, as the Appellant's GIS and Survivor Benefit caused for her net income to equal or exceeds the amount of Disability Assistance determined under the Regulation, the Ministry reasonably determined that she received the Overpayment.

(c) Liability

As the Appellant was not eligible to receive the Disability Assistance she received between June 2021 and October 2022, and because the amount of the Overpayment is not appealable, the Panel finds that the Appellant is liable to repay the amount of the Overpayment pursuant to section 18(1) of the Act. Again, the Panel finds that the Appellant failed to report the GIS and Survivor Benefit that she received between June 2021 and October 2022 to the Ministry. As a result, she was not eligible to receive the amount of Disability Assistance that she received between the noted period. In sum, the Panel finds that the Ministry reasonably determined that the Appellant was liable for the Overpayment.

Conclusion

The Panel finds that the Ministry's decision to find that the Appellant was ineligible to receive DA between June 2021 and October 2022, and liable for repayment of the Overpayment was a reasonable application of the legislation in the circumstances.

The Appellant is not successful on appeal.

Legislation

Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form specified by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

Definitions

1 (1) In this regulation:

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of [Canada Pension Plan](#) benefits;
- (g) employment insurance;
- (h) union or lodge benefits;

- (i) financial assistance provided under the [Employment and Assistance Act](#) or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the [Criminal Injury Compensation Act](#) or awards of benefits under the [Crime Victim Assistance Act](#), other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the [Immigration and Refugee Protection Act](#) (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation;

Limits on income

9 (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form specified by the minister:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;

- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the [Workers Compensation Act](#) received by the family unit in the calendar month.

APPEAL NUMBER 2024-0303

Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred
back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Anil K. Aggarwal

Signature of Chair

Date (Year/Month/Day)

2024/05/02

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2024/05/02

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2024/05/02